

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

COMPLAINANT'S PROPOSED FINDINGS OF FACT

In accordance with the Scheduling Order dated October 4, 2014 and Order on Complainant's Motion to Extend Time to File Proposed Findings of Fact and Brief dated March 10, 2015, Complainant, Econocaribe Consolidators, Inc. ("Econocaribe") hereby sets forth its proposed findings of fact pursuant to 46 C.F.R. 502.221.

THE PARTIES

1. Econocaribe is a licensed ocean freight forwarder and non-vessel operating common carrier ("NVOCC"), with its principal place of business at 2401 NW 69 Street, Miami, FL 33147. It maintains a branch office at 637 E. Albertoni St., Suite 104, Carson, CA 90746, United States. (Complaint (ECONO PFF App. 00001)).
2. Amoy International, LLC ("Amoy") does business as an Ocean Transportation Intermediary under Federal Maritime Commission license number 019113N, bond number

8941895, with its place of business at 14145 Proctor Avenue Suite 14, City of Industry, CA 91746, United States. (Complaint (ECONO PFF App. 00001)).

3. Mr. John Kamada is the Manager of the Los Angeles Office of Econocaribe. He is in charge of the business in the area of California. (John Kamada Declaration (ECONO PFF App. 00439)).

4. Mr. Ariel Martinez is an employee of Econocaribe. (John Kamada Declaration (ECONO PFF App. 00439)).

5. Ms. Melissa Chen is the owner of Amoy. (Melissa Chen Declaration - Opposition to Motion for Partial Summary Judgment (hereinafter "Melissa Chen Declaration 1")(ECONO PFF App. 00006)).

6. Ms. Krystal Lee was an employee of Amoy who made the booking that gave rise to this proceeding. (Amoy's Admission Responses (ECONO PFF App. 00033)).

7. Krystal Lee's scope of employment included booking vessels with NVOCCs. (Amoy's Interrogatories Responses (ECONO PFF App. 00036)).

SEQUENCE OF EVENTS

8. At 3:31 PM¹, May 17, 2013, John Chen of Kumquat Tree, Inc. contacted Krystal Lee for quotation for a shipment of "auto parts" from Oakland, California to Xingang, China. (ECONO PFF App. 00040-00041).

9. At 1:55 PM, May 17, 2013, Krystal Lee gave John Chen a quotation of Maersk from Oakland to Xingang. (ECONO PFF App. 00039).

¹ Because John Chen's area code was 215 (Philadelphia, PA), the inconsistency with the apparently later emails can be explained by the fact that all other emails were time-stamped with Pacific Standard Time where both Econocaribe's L.A. office and Amoy are located, while this email was time-stamped with Eastern Standard Time where John Chen was likely to be located.

10. At 2:14 PM, May 17, 2013, Krystal Lee wrote to John, stating in part "it was nice speaking with you." Apparently, a conversation took place between Krystal Lee and John Chen prior to this time. (ECONO PFF App. 00038).
11. At 3:26 PM, May 17, 2013, Krystal Lee contacted Econocaribe for a shipment of cargo from Oakland to Xingang. (ECONO PFF App. 00047).
12. At 4:01 PM, May 17, 2013, Ariel Martinez of Econocaribe replied to Krystal Lee's inquiry, advising her the schedule of the next Maersk sailing. (ECONO PFF App. 00046).
13. At 11:36 AM, May 20, 2013, Krystal Lee wrote to John Chen that "I will place booking for 4x40'GP containers for this weeks[sic] cut off." (ECONO PFF App. 00049).
14. At 11:46 AM, May 20, 2013, Krystal Lee made a booking with Econocaribe for four containers of "Auto Parts (New)" from Oakland to Xingang. (ECONO PFF App. 00045-00046).
15. At 11:53 AM, May 20, 2013, Krystal Lee confirmed with John Chen that a booking had been made. (ECONO PFF App. 00050).
16. At 11:58 AM, May 20, 2013, Econocaribe confirmed the booking with Krystal Lee. (ECONO PFF App. 00045).
17. At 12:13 PM, May 20, 2013, Krystal Lee confirmed with John Chen the Maersk booking. (ECONO PFF App. 00052-00053).
18. At 2:35 PM, May 24, 2013, Gaby Reynolds, another Amoy employee, emailed Econocaribe the shipper's instruction and instruct Econocaribe to designate Victory Maritime Services (China) Ltd. as the ultimate consignee on the Master Bill of Lading. (ECONO PFF App. 00055 and 00065).

19. Maersk issued Master Bill of Lading # 560323561 for this shipment. Four containers used for this shipment were PONU1750766, PONU1877617, MRKU0232720, and MSKU6129259. (ECONO PFF App. 00058-00059).

20. Econocaribe issued its Bill of Lading # ECCI LAX-CNXGG-04-439024. Pursuant to Amoy's instructions, The shipper on this Bill of Lading was Amoy and the consignee was Victory Maritime Services (China) Ltd. (ECONO PFF App. 00061).

21. Amoy issued its Bill of Lading for this shipment. The shipper on this Bill of Lading was Kumquat Tree Inc. and the consignee was Tianjin Tenfei Trading Co. (ECONO PFF App. 00063).

22. At 11:15 AM, June 17, 2013, the cargo's arrival date in China, Melissa Chen wrote to Ariel Martinez. Her email reads:

“We are having difficulty locating shipper who placed order with us. and I believe that we have problem with this shipment as we are also unable to locate the consignee on the BL. can you please forward us to your manager as we need assistances to this issue. container are arriving in Tanjin today.”
(ECONO PFF App. 00068).

23. At 11:20 AM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. John Kamada was copied with this email. His email reads:

“Noted Melissa.
What do you need us to do?
I’ve copied in John Kamada to assist with the issue.”
(ECONO PFF App. 00068).

24. At 11:22 AM, June 17, 2013, John Kamada wrote to Melissa Chen. His email reads:

“Please let me know what you need from me. I am happy to assist.”
(ECONO PFF App. 00067).

25. At 11:54 AM, June 17, 2013, Melissa Chen wrote to John Kamada. Her email reads:

“... We have completely lost contact with the supplier/buyer for these 4 containers, and we also just found out the commodities were auto parts, but they *are recycle items*. I’m still trying to get more information from vendor about these items.

In this case, **can we request MSK to allow us some extra time at port of destination or abandon the cargo or return to US seller or resell to other parts in China?...**”

(ECONO PFF App. 00067).

26. At 1:47 PM, June 17, 2013, John Kamada wrote to Melissa Chen. His email reads:

"Normally, we cannot request free time after the vessel sails. In this case, we might be able to get some free time applied to the booking. I will check on that. In my experience, if these are recycled auto parts, they are usually scrap metal. Can you confirm? If so, might be fairly easily to resell at destination."

(ECONO PFF App. 00076).

27. At 1:55 PM, June 17, 2013, Ariel Martinez wrote to George Amador of Maersk. His email reads:

"The consignee is requesting additional free time at the destination. Please confirm if you can grant them an extension..."

(ECONO PFF App. 00112).

28. At 2:36 PM, June 17, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"We are trying to get the details of exact commodity and will let you know ASAP. meanwhile, if you can help us to get extra time at the port for us to figure out how to fix problem would be very helpful."

(ECONO PFF App. 00078).

29. At 11:22 AM June 18, 2013, George Amador replied Ariel Martinez by saying "how many days are they looking for?" (ECONO PFF App. 00111).

30. At 3:10 PM, June 18, 2013, Ariel Martinez replied George Amador by saying "the max amount you can offer." (ECONO PFF App. 00111).

31. Apparently, George Amador and Ariel Martinez had a telephone conversation thereafter.

Then at 10:28 AM, June 19, 2013, Ariel Martinez wrote to George Amador requesting additional 5 days extension. His email also inquired about the return options and costs. His email reads:

"Per our telephone conversation, please request an additional 5 day extension.

Also, the shipper believes the consignee may refuse the cargo at the destination. What are our options to return the container back to the US? Can you please advise the costs?
(ECONO PFF App. 00110).

32. Ariel Martinez followed with Maersk on the return options and charges several times at least four times until 8:34 AM, June 25, 2013. (ECONO PFF App. 00108-00110).

33. At 10:15 AM, June 18, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"we are unable to get the detail cargo information at moment, the product what seems like is:

-rubber speed bump

-large rubber blocks.

the middle man for the shipment is: South San Francisco Global Waste Management

we are afraid these might be the waste materials, or the rubbers bumps and blocks made out of waste tires.

please let me know what we can do about these. We certainly do not have buyer in China."

(ECONO PFF App. 00080-00081).

34. At 8:18 PM, June 18, 2013, Melissa Chen wrote to Krystal Lee. Her email reads:

"Tianjin port is strictly not allowing any scrap materials to go in. These containers will have to be moved to other smaller countries in Asia. Start immediately looking for buyers around smaller third world countries around China. Via trading site, agents and US sellers."
(ECONO PFF App. 00116).

35. At 9:54 AM, June 19, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

"please also advise the return option to US. **I was told by China office such commodity is prohibited in importing.** please let me know our options."

(ECONO PFF App. 00083).

36. At 10:28 AM, June 19, 2013, Ariel Martinez wrote to George Amador. Beside requesting

additional 5 days extension, he inquired about the return options and costs. His email reads:

"Per our telephone conversation, please request an additional 5 day extension.

Also, the shipper believes the consignee may refuse the cargo at the destination. What are our options to return the container back to the US? Can you please advise the costs?

(ECONO PFF App. 00110).

37. At 2:32 PM, June 20, 2013, Melissa Chen wrote to Krystal Lee. Her email reads:

"I need these information:

- buyers alternative

-carrier confirmation from Econo

- all costs
- information from Daniel"
(ECONO PFF App. 00115).

38. Daniel referred to in the above email is Daniel Akhromtsev of Global Waste Management, Inc., from whose facility the four containers of used truck tires were loaded with trucker. (ECONO PFF App. 00167).

39. At 3:46 PM, June 20, 2013, Krystal Lee emailed Econocaribe, asking Econocaribe to confirm "all charges for this shipment and carrier confirmation for this shipment." (ECONO PFF App. 00122-00123).

40. At 3:47 PM, June 20, 2013, Econocaribe responded to Krystal Lee's email by asking whether the "all charges" meant "all charges for the OFR to Xingang" or "the return back to the U.S." (ECONO PFF App. 00122).

41. At 3:52 PM, June 20, 2013, Krystal Lee answered the email by saying "please include all fees including return to U.S." (ECONO PFF App. 00121).

42. At 3:55 PM, June 20, 2013, Econocaribe answered the email by saying "Noted, I've been working on this with carrier. We are waiting for them to confirm all the charges. I will let you know once they revert the details." (ECONO PFF App. 00120).

43. At 9:42 AM, June 21, 2013, Ariel Martinez wrote to Krystal Lee. His email reads:

"Maersk is still waiting on their overseas office to confirm. They say they will have a response by Monday.

Just to confirm, all 4 containers need to be returned back to the US correct? Also, there has not been any customs formalities done in China, correct?"
(ECONO PFF App. 00092).

44. Amoy never answered this email. (John Kamada Declaration (ECONO PFF App. 00440)).

The fact that Amoy produced this Ariel Martinez 9:42 AM, June 21, 2013 email yet no responses to it confirms that Amoy never responded to this email.

45. At 9:44 AM, June 21, 2013, Melissa Chen wrote to John Kamada. Her email states as follows:

"... the vessel arrived to port for few days now, and I understand you are still waiting to hear from MSK but we are running out of time.

This is abandoned shipment by shipper / consignee. We can as well abandon it, but we want to keep everything in the good term and to solve this matter instead of dropping it. **If you need me to issue abandon letter to MSK to push them for faster response please let me know.** We sincerely just want to solve this matter the **quickest** possible..." (ECONO PFF App. 00119).

46. At 10:44 PM, June 23, 2013, John Kamada responded to Melissa Chen's email. His email states:

"We are still waiting on Maersk but I would suggest you prepare the abandon letter and have it ready to go." (ECONO PFF App. 00118).

47. At 3:01 PM, June 24, 2013, Ariel Martinez wrote to Melissa Chen. His email reads:

"Maersk stated their sales team is still working on the pricing for the 4 containers to be returned back to the US.

I'm pushing them on a daily basis and expect further details tmw morning." (ECONO PFF App. 00094-00095).

48. At 5:53 PM, June 25, 2013, Krystal Lee sent John Kamada an abandonment letter. (ECONO PFF App. 00118). The abandonment letter is attached as ECONO PFF App. 00106.

49. At 9:35 AM, June 26, 2013, Ariel Martinez wrote to George Amador. His email reads:

"Further to my emails below, we've just received an abandonment letter from the customer. Please review the attachment.

Please advise all costs for returning the containers back to the US." (ECONO PFF App. 00107).

50. At 9:37 AM, June 26, 2013, Ariel Martinez wrote to Krystal Lee. His email reads:

"We received your abandonment letter and forwarded it to the carrier. I've brought this issue up to Maersks management in efforts to expedite the process.

I will revert the outcome asap." (ECONO PFF App. 00107).

51. At 10:57 PM, July 1, 2013, Melissa Chen wrote to John Kamada. Her email states:

"...the process here is taking really long time and we all don't know what is happening and what MSK is going to do with the containers. there is no word from anyone on how they want to resolve this issue.

meanwhile, please let me know if you can still amend original consignee on the BL with MSK?" (ECONO PFF App. 00136).

52. At 11:01 AM, July 1, 2013, John Kamada wrote to Melissa Chen. His email states:

Given the circumstances, we can probably still revise the Maersk B/L. Do you think you might find another buyer?
(ECONO PFF App. 00136).

53. At 11:12 AM, July 1, 2013, Melissa Chen wrote to John Kamada. Her email states:

"no, we did not find buyer because of **the commodity is not permitted to go into China.** I wanted to list the buyer on BL of what shipper gave us originally. please let me know." (ECONO PFF App. 00135).

54. At 7:29 PM, July 1, 2013, John Kamada wrote to Melissa Chen. His email states:

"We will call Maersk tomorrow and push them for a response. These types of things usually take awhile but I will make sure we expedite it.
Hope to have some answers to you shortly."
(ECONO PFF App. 00135).

55. At 8:58 AM, July 9, 2013, Ariel Martinez wrote to Melissa Chen. He copied a message from Maersk China to Econocaribe. The Maersk email provides:

"On 4th July we have contacted with cnee: VICTORY MARITIME SERVICES(022-23336331 ms liu). Customer said that it was not there[sic] shipment and would help to check first and inform us.

On 8th July we contacted with VICTORY MARITIME SERVICES(022-23336331 ms liu) again, she said that it was actually not their booking and their overseas company also no respond about the shipment. They have no idea about it.

Pls urgently inform shipper accordingly and advise if they need to find new cnee to help them return issue. Any update pls inform us urgently.

Detention by today is 18360 RMB and will daily increase as below tariff.

Pls make sure shipper as cargo owner be informed the longstanding. They need to push CNEE arrange cargo delivery ASAP.

..."

(ECONO PFF App. 00133-00134).

56. This Maersk email was sent by George Amador of Maersk to Ariel Martinez on 8:48 AM, July 9, 2013. (ECONO PFF App. 00141-00144).

57. At 9:27 AM, July 9, 2013, Melissa Chen wrote to Ariel Martinez. Her email states:

"why is MSK took so long to take this step. We will not be responsible for the storages for these containers. I have started requesting the assistance since June 17th. please advise."
(ECONO PFF App. 00132-00133).

58. At 9:37 AM, July 9, 2013, John Kamada wrote to Melissa Chen. His email states:

"Maersk will probably be able to absorb some of these changes. Unfortunately, abandoning the cargo does not relieve the shipper of the potential charges. At this point, the storage charges are not the biggest issue. Since no other consignee can be located, **you have the option to return the cargo back to the US or have it sold towards the costs involved (Ocean freight/storage/etc).**

Please let me know what you would like to do."
(ECONO PFF App. 00132).

59. At 10:27 PM, July 9, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"I was requesting the return of the shipment soonest we found out there this was abandoned cargo. I don't understand why this same topic is coming back now to us. my emails since Jun 19th was already requesting for these options and waited for carrier's advise since.

This shipment has no choice to either be returned or abandoned. please urgently advise. "
(ECONO PFF App. 00132).

60. Amoy in its recent supplemental production states that the June 19th email referred to June 17, 2013 email and the similar requests could be found in June 19, 20, 21, 2013 emails.

(ECONO PFF App. 432)

61. At 10:53 AM, July 9, 2013, John Kamada wrote to Melissa Chen. His email reads:

"I need you to tell me if it is to be auctioned or returned. In cases like this, the responsibility of the cargo falls on the shipper on the b/l. **We have asked Maersk for this information from the first day that you requested it.** From the additional free time request to the abandonment letter to today's response from them. I will do all I can to keep the charges at a minimum."
(ECONO PFF App. 00131).

62. At 11:29 AM, July 9, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"I am not familiar with MSK about abandonment procedure and costs will be involved. **Because even returning to the origin, we also can't find either of the seller or the middle man at moment.**

All my intention is to have this problem solved soonest possible. Please help me to check with MSK if you can talk to someone and ask them what will be **cheapest** way to solve this matter. I still think returning will be the fastest way, please let me know."

(ECONO PFF App. 00131).

63. On 1:33 PM, July 9, 2013, Ariel Martinez wrote to George Amador. His email reads:

"So what are our options here? Since Victory is not helping out, is our only option abandonment? Can we return the containers back to the US without docs at an additional fee?

We need a breakdown of procedures and charges for the following options:

-Return back to the US

Please revert the details asap."

(ECONO PFF App. 00155).

64. Two more email exchanges occurred after the above email. After knowing that the cargo was not insured (ECONO PFF App. 00130), on 9:59 AM, July 10, John Kamada wrote an email to Melissa Chen. His email reads:

"Ok.

The final decision is yours.

You can abandon the cargo for sale at destination with the understanding that all charges (ocean freight, de-vanning, storage etc...) not covered by the sale of goods will be to your account. We do have your abandonment letter but we needed to get Maersk's stance on the cargo before we could proceed.

Or

You can return the shipment to US for an attempt to re-sell here but this is usually a more expensive alternative.

Should you choose to abandon the cargo, we will begin the process immediately. Please understand that the steamship lines move very slow on these things so we will need to continue to push them.

Please let me know and thanks."

(ECONO PFF App. 00129-00130).

65. At 10:36 AM, July 10, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"Please proceed with abandonment of the containers immediately."

(ECONO PFF App. 00129).

66. Without getting any response from Maersk, and after Melissa Chen confirmed her choice of abandonment, on 4:47 PM, July 10, 2013, Ariel Martinez wrote to George Amador. His email reads:

"The customer just confirmed they would like to abandon the containers. Please confirm the procedures and costs to do so."

(ECONO PFF App. 00154).

67. At 12:26 PM, July 12, 2013, Melissa Chen wrote to John Kamada. Her email reads:

"following up on the status with MSK, please advise if any response?"
(ECONO PFF App. 00128-00129).

68. Ariel Martinez had a phone conversation with George Amador after receiving email from Melissa Chen. He followed up with George Amador by an email dated 1:16 PM, July 12, 2013. His email reads:

"Per our telephone conversation just now, please abandon the containers. Please confirm all the charges that will be related to the abandonment."
(ECONO PFF App. 00153).

69. At 9:21 AM, July 15, 2013, Ariel Martinez wrote to George Amador. His email reads:

"Have you heard back from your overseas office? Please confirm the procedure/charges for the abandonment."
(ECONO PFF App. 00153).

70. At 6:59 AM, July 17, 2013, George Amador wrote to Ariel Martinez. His email reads:

"As the cargo owner **they absolutely can't abandon the containers, now they must find new buyer at destination or arrange re-export.** The detention charge till today is 39480 RMB. Please update below information to shipper. We suggest to them to take quick action to arrange their cargos, even if cargo will be returned to origin, auctioned or destroyed in the future due to no one pick up containers. All the fee will be charged to the shipper. If you need any help please contact us.

According to China Law, **When shipment discharge goes past 90days without pick up by CNEE, it will be considered as abandon cargo and can be disposed by China Customs.**

- Due to the cargo nature, China customs will need assistance from the China Inspection and Quarantine Authority to check the cargo first. Only with the result of the inspection, can customs decide what to do with the cargo. We heard usually there are 3 possible ways of finally handling the cargo:

1. Order return to origin (if cargo is found as prohibited or restricted to import to China).
2. Auction (if cargo is found allowed to import to China).
3. Destroy (if cargo is found not in good condition for return and auction)."

(ECONO PFF App. 00152).

71. At 10:03 AM², July 17, 2013, John Kamada wrote to George Amador. His email reads:

² Though the email does not show "AM," because the email responding to this email was dated as 13:36 of the same date, this email must have been sent on 10:03 AM.

"If I read the below correctly, we only have to re-import if the cargo is found as prohibited. It should not be. We should be able to abandon, auction and or destroy cargo. Is there more to the e-mail that they sent from overseas? I have been involved in a few cases of this nature and we have always been able to abandon at destination.

Please let me know and thanks."

(ECONO PFF App. 00151-00152).

72. At 1:36 PM, July 17, 2013, George Amador replied John Kamada's email. His email reads:

"Hi John, Correct after 90 days it is considered abandoned but then of course come the additional charges as mentioned in correspondence which will be for the account of the shipper. There was no additional information from overseas."

(ECONO PFF App. 00151).

73. At 3:54 PM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. In his email, he relayed Maersk's message related to the disposition of cargo to Melissa Chen. His email reads:

"Per Maersk, the containers cannot be abandoned until after 90 days of arrival. Please see the details below:

'As the cargo owner they absolutely can't abandon the containers, now they must find new buyer at destination or arrange re-export. The detention charge till today is 39480 RMB. Please update below information to shipper. We suggest to them to take quick action to arrange their cargos, even if cargo will be returned to origin, auctioned or destroyed in the future due to no one pick up containers. All the fee will be charged to the shipper. If you need any help please contact us.

According to China Law, When shipment discharge goes past 90days without pick up by CNEE, it will be considered as abandon cargo and can be disposed by China Customs.

- Due to the cargo nature, China customs will need assistance from the China Inspection and Quarantine Authority to check the cargo first. Only with the result of the inspection, can customs decide what to do with the cargo. We heard usually there are 3 possible ways of finally handling the cargo:

1. Order return to origin (if cargo is found as prohibited or restricted to import to China).
2. Auction (if cargo is found allowed to import to China).
3. Destroy (if cargo is found not in good condition for return and auction).'

Please let me know if you have any questions. "

(ECONO PFF App. 00127-00128).

74. At 4:01PM, July 17, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

"this is the exact information we needed to hear from MSK since early June when I first contacted your office.

It seems the shipment will need to be destroyed at port of destination. please advise the procedure ASAP."

(ECONO PFF App. 00127).

75. At 4:10 PM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. His email reads:

“Noted, after the 90 days China customs will determine how they will proceed either of the three options below.

I will follow up and keep you posted on any new development.”

(ECONO PFF App. 00126).

76. At 4:19 PM, July 17, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

“I don’t think we can wait for 90 days, can you check again please?

If waited longer, the cost will go up sky high.”

(ECONO PFF App. 00126).

77. At 4:29 PM, July 17, 2013, Ariel Martinez wrote to Melissa Chen. His email reads:

“Noted Melissa. I will check and see but just note this looks like a China Customs regulation. It might be difficult to alter their rules/procedures.”

(ECONO PFF App. 00125).

78. At 5:15 PM, July 17, 2013, Melissa Chen wrote to Ariel Martinez. Her email reads:

“if all waited for 90 days, there will be no possible way for anyone to pay these fees, please let me know and I hope MSK can respond faster?”

(ECONO PFF App. 00125).

79. At 12:53 PM, July 18, 2013, George Amador wrote to John Kamada. His email reads:

"John, Just a heads up right now we are looking at 6,400 usd and we still have 2 more months to go. I have sent an email to our overseas office to see if we can jumpstart the abandonment process or if we have to wait for customs. This is in the effort of reducing the charges that are increasing day by day."

(ECONO PFF App. 00151).

80. At 10:03 AM, July 18, 2013, John Kamada wrote to George Amador. His email reads:

"Thank you for the update Sir.

Hopefully, we can put this file to rest as quickly as possible. Please keep us posted."

(ECONO PFF App. 00150-00151).

81. At 6:18 PM, July 23, 2013, John Kamada resent Amoy's June 24, 2013 abandonment letter to Maersk. His email reads:

"Please see attached letter from the shipper. This was sent to all in copy below on 6/26.

I don’t believe this particular string was responded to.

Im not going after Maersk on this. Just need to know what to tell my customer. If there is indeed a 90 day waiting period, is there any way that Maersk can help us work with customs to reduce it?..."

(ECONO PFF App. 00107).

82. At 2:33 PM and 2:41 PM, August 14, 2013, Krystal Lee wrote to Daniel Akhromtsev of Global Waste Management, Inc., asking him actual commodity description, photos, packing list and commercial invoice, among other things. (ECONO PFF App. 00163-00164).

83. At 1:35 PM, August 15, 2013, Melissa Chen wrote to Daniel Akhromtsev again for pictures of the cargo, packing list and invoice and value of the goods. Her email reads:

"We are sorry for pushing you on this one, the attorneys are on coming after the case because of John vanished after he shipped out these containers, *is causing over \$100,000 on losses...*"

(ECONO PFF App. 00161-00162).

84. At 3:40 PM, August 16, 2013, Melissa Chen wrote to Daniel Akhromtsev, asking for pictures of the product, description and value of the product. (ECONO PFF App. 00160-00161).

85. At 3:47 PM, August 16, 2013, Daniel Akhromtsev wrote to Melissa Chen. His email reads:

"we don't take pictures when we load containers
I will try to match the container numbers and see what we shipped."

(ECONO PFF App. 00160).

86. At 4:02 PM, August 16, 2013, Melissa Chen wrote back to Daniel Akhromtsev. Her email reads:

"that would really help. How soon can you help to get those information?
we are waiting for this information to overseas new buyer/customs and *shipping company*."

(ECONO PFF App. 00160).

87. At 3:55 PM, August 19, 2013, Melissa Chen pushed Daniel Akhromtsev for information related to the four containers. (ECONO PFF App. 00172-00173).

88. At 4:51 PM, August 19, 2013, Daniel Akhromtsev informed Melissa Chen that "looks like it was bales." (ECONO PFF App. 00172).

89. At 4:57 PM, August 19, 2013, Melissa Chen asked Daniel Akhromtsev for "photos / detailed description / value / packing slip for 4 container orders ASAP." (ECONO PFF App. 00172).

90. At 11:55 PM, August 19, 2013, Daniel Akhromtsev wrote to Melissa Chen. His email reads:

"... It look like it was just tire bales. That's all the information I have. I don't take pictures of every container I ship. I ship out over 30 containers per week sometimes. I don't charge for bales at the moment. They are free...The only other thing that might help is if you give me phone number, maybe I try to match that to customers that I have and give you the name that he uses when he does business with me..."
(ECONO PFF App. 00180-00181).

91. At 10:26 AM, August 20, 2013, Melissa Chen wrote to Daniel Akhromtsev. She again stated that "such thing is causing over \$100,000 losses to us and a big lawsuit." (ECONO PFF App. 00180).

92. At 3:04 PM, August 14, 2013, Ariel Martinez wrote to George Amador. His email reads:

"Can you please confirm the status of this order? As of today how much is the storage and how many more days do we have until the 90 days are up?"
(ECONO PFF App. 00150).

93. There was no response from Maersk, although Econocaribe periodically sent reminders to Maersk through the setting of an automatic reminder to do so. (ECONO PFF App. 00150).

94. Maersk's next correspondence came on September 4, 2013. At 9:47 AM, September 4, 2013, Barbara Suarez of Maersk wrote to John Kamada. Her email reads:

"Hi John,
Per our last communication on this 7/30/13, you were going to put together a formal letter of abandonment so we can ask our colleagues in China present this to Customs and see if they're willing to speed up the 90 day timeline. I never received the letter.

You also noted at that time that your agent had confirmed the 90 day waiting period. This cargo discharged 6/17/13 so the waiting period should be coming up within next couple of weeks. We'll go out to MSK China and have them give us all costs to date associated w/this abandoned load."

(ECONO PFF App. 00149).

95. Although Barbara Suarez stated that she never receive an abandonment letter, Econocaribe did at least had sent the abandonment letter at least twice to Maersk. (ECONO PFF App. 00107).

96. At 12:55 PM, September 4, 2013, John Kamada emailed Barbara Suarez that he would have the letter sent to her shortly. (ECONO PFF App. 00149).

97. At 1:09 PM, September 6, 2013, Barbara Suarez wrote to John Kamada. Her email reads:

"Regret that this situation with abandoned shipment in China does not look very promising. From everything we're being told, if this cargo is seized by Customs once the 90 days after discharge timeline hits, then it could take China Customs an undetermined amount of time to decide on cargo disposition. MSK China is not able to give us a clear timeline of how long it may take.

They continue to tell us **best option is for your agent in country to see about re-export options before this is seized. We've already advised that you don't have commercial documents to present to China Customs.**

Latest communication from MSK China is telling us that if we go ahead and send them your formal letter of abandonment, they can "try and find a local agency or CHB in the market to ask about this issue."

The detention at destination thru 9/5/13 quoted is already at 171480.00 RMB and increases 1980 RMB per day.

Please get us a letter on Econocaribe letterhead and let's see if MSK China is able to make any progress."

(ECONO PFF App. 00148).

98. John Kamada called Melissa Chen, informing her about the substance of this email. (John Kamada Declaration (ECONO PFF App. 00440)).

99. At 12:38 AM, September 10, 2013, John Kamada sent Barbara Suarez the abandonment letter. (ECONO PFF App. 00148).

100. The abandonment letter was subsequently sent to Maersk China. (ECONO PFF App. 00147).

101. At 2:14 PM, September 12, 2013, Barbara Suarez asked John Kamada photos of "what was loaded at the supplier." (ECONO PFF App. 00146).

102. At 5:59 PM, September 12, 2013, Ariel Martinez sent photo to Barbara Suarez. (ECONO PFF App. 00146).

103. At 1:59 PM, September 13, 2013, Ariel Martinez asked Melissa Chen the name and information of the actual shipper that booked the shipment with Amoy. (ECONO PFF App. 00186).

104. At 10:46 PM, September 16, 2013, Melissa Chen replied to Ariel Martinez's September 13, 2013 email. (ECONO PFF App. 00186).

105. On September 25 and 26, 2013, Econocaribe requested Amoy to pay the outbound freight. Amoy paid according. (ECONO PFF App. 00188-00191).

106. At 12:10 PM, September 26, 2013, Melissa Chen notified Econocaribe that future communications related to this shipment should only be sent to her. Her email reads:

"Krystal was the person made this unauthorized booking is no longer with the company. No one else is involved in this booking so for all related communications, please only come to me." (ECONO PFF App. 00188).

107. At 8:05 PM, October 18, 2013, Ariel Martinez wrote to Barbara Suarez, inquiring about the status of the shipment. (ECONO PFF App. 00194-00195).

108. At 3:46 PM, October 21, 2013, Barbara Suarez wrote to Ariel Martinez. Her email reads:

"Regret the situation does not look good. Cargo was manifested as auto parts and in fact they are cut-baled tires. As you know, cargo is in China Customs control and we have notified our office in China as to cargo contents and await their feedback on what is next course of action. Suggest you also engage your agent in China as this will have to be handled over there on basis you do not have commercial documentation to request return of cargo to origin..." (ECONO PFF App. 00194).

109. At 9:05 AM, November 1, 2013, Barbara Suarez wrote to John Kamada and Ariel Martinez. Her email reads:

“Just following up ref our lastest discussion with MSK China on this abandoned shipment.

Our office tells us that option of cargo owner re-exporting is a risk as Customs is very sensitive about this “restricted” commodity (used cut-baled tires). Cargo manifested as auto parts.

Only option now is for Customs to proceed with their process of inspection and disposition:

- Still a chance they may order cargo back to origin as ‘returned goods’ (cargo prohibited/restricted import to China)

- Auction

- Destruction

While we wait to hear back from China Customs, just wanted to drop you a note as this is where we stand.”

(ECONO PFF App. 00193).

110. At 9:50 AM, November 1, 2013, Ariel Martinez forwarded the Barbara Suarez email to Melissa Chen. (ECONO PFF App. 00199).

111. Amoy never responded to this email (John Kamada Declaration (ECONO PFF App.00440)).

112. At 9:12 AM, April 2, 2014, Barbara Suarez wrote to Ariel Martinez and John Kamada.

Her email reads:

“Just wanted to bring you up to date on the longstanding abandoned containers in China.

We have been constantly following up with our office overseas waiting to hear back on Customs disposition. Just heard this morning that Customs is ordering these containers to return to origin, the cargo is ‘cut baled tires’, which is a restricted commodity. If you will recall, this cargo was originally manifested as auto parts not tires and cargo subject to fines by China Customs.

I have asked our office to petition Customs to allow destruction at destination but waiting to hear back. Have asked them to provide all costs associated with the storage, fines and other fees which may apply so we can provide those to you as shipper of record...”

(ECONO PFF App. 202).

113. At 10:55 AM, April 15, 2014, Econocaribe sent Krystal Lee (apparently not realizing that she had left Amoy) an email about the status of the cargo. The Econocaribe email reads:

“I am sending you this email on behalf of John Kamada, he is currently traveling and wanted to make sure you received an update on you bkg. The below message was sent from Maersk to John directly.

Below is complete cost picture from agent in China who can help with return shipment, or you can nominate your own agent in China to coordinate the re-export. The costs quoted below are good thru 5/10/14 only. Storage charges beyond that day will have to be re-calculated.

China Customs has not imposed a fine yet; however, Maersk China recommends that return cargo process is initiated right away to avoid possible fines down the road.

As FYI, we asked whether China Customs requires return to original load port Oakland but were told they don't care if it returns to Oakland or any other port..."

(ECONO PFF App. 00208-00210).

114. At 11:24 AM, April 15, 2014, Melissa Chen replied to the Econocaribe email. Her email reads:

"Krystal is no longer with the company.

For below case, please help us to negotiate the costs, the shipper vanished and we had hard time getting original suppliers to accept the loads back. I have hired collection agency, attorney and all, but none of these people could be found.

It has been long time we waited to hear from MSK about this freight. If any suggestions you can help to come up and take care of this problem, please let me know. I want to solve this problem soonest possible.

The total cost below is really expensive and I can't afford to pay them. I know is not related to you and to the case, **but Krystal has caused by problems with other shipments too and we have lost way too much money in past 2 years, law suits, penalties and etc.**

Please help me to negotiate and I will again look for people in US can accept the container back."

(ECONO PFF App. 00212).

115. At 9:55 AM, April 16, 2014, John Kamada wrote to Melissa Chen. His email reads:

"We have asked Maersk numerous times to push Customs in China but unfortunately, they move at their own slow pace. They would like us to return the cargo to any US port. The sooner we can get it moving, the better. I will ask them again to try and mitigate the costs.

Please let me know how to proceed as this is ultimately your decision on where we go from here."

(ECONO PFF App. 00216-00217).

116. At 2:12 PM, April 17, 2014, Melissa Chen wrote to John Kamada. Her email reads:

"once abandonment letter was sign to carrier, they usually don't come back to ask to take the container back. can you please check again?

I am checking with Customs about importing, because we don't have anyone would claim the cargo, so even returns could be another problem too."

(ECONO PFF App. 00218-00219).

117. At 7:44 AM, April 22, 2014, John Kamada wrote to Melissa Chen. His email reads:

"Maersk advises that because the cargo was mis-declared, this is their only opinion.

I received an email from them this morning as follow:

We are being pressed for a response as to how you and your customer want to proceed. We have told them you are presenting options to your customer but afraid if we don't move on their offer/storage, costs will escalate.

Will your agent handle re-export or will you be asking China Ocean Shipping (recommended by Maersk) to handle on your behalf.

...

May I suggest you proceed ASAP and accept the charges. We can still try to mitigate the overall charges but unfortunately, China Customs is now pushing Maersk.

Please let me know."

(ECONO PFF App. 00221-00222).

118. At 3:21 PM, April 22, 2014, Melissa Chen wrote to John Kamada. Her email reads:

"the problem is bringing it back to US, we don't have importer for this container. They took too long to get back to us.

We have this company as original seller to the people who shipped with us, if MSK is to return, can they list them as importer on MBL..."

(ECONO PFF App. 00224).

119. At 3:36 PM, April 22, 2014, John Kamada wrote to Melissa Chen. His email reads:

"Maersk is ok with showing this customer as the importer on the b/l. just note that the charges need to be paid up front PRIOR to the cargo retuning to Los Angeles. Will this customer be responsible for clearing the freight?

Please let me know if you would like to proceed. Maersk is trying one more time to negotiate the charges."

(ECONO PFF App. 00227).

120. At 7:23 PM, May 6, 2014, John Kamada wrote to Melissa Chen. His email reads:

"Here is Maersk's final offer. They started at a total of 141,000.00 for storage, return etc... We were able to negotiate down to the following:

...

Re-export cost: USD14,504

Depot charge: USD2699

Detention:USD 50,000

Total: USD67203

....

After receive payment, we will arrange return shipment immediately.

Please let me know."

(ECONO PFF App. 00230-00232).

121. At 1:22 PM, May 9, 2014, Melissa Chen wrote to John Kamada. Her email reads:

"Being victim of the case, I fully understand this shipment has also caused Maersk lots of problems. We've tried everything we could in the very beginning when we suspected something

wasn't going right, from tracing back to trucker to vendor and hiring attorney after the shipper, but we weren't able to get any help and we have completely lost contact with shipper.

I have just took care of lawsuits with MSC and Zim due to previous huge losses with similar problem caused by the same sales. We are struggling to getting thru recoveries at moment. When the abandonment letter was signed to Maersk last year, I was no longer expecting to receive emails instructing to taking back these containers. Maersk has these containers since last year, they were aware of the situation before even containers arrive to port, and it is up to them for letting the containers sitting at port or solving this problem sooner. Unfortunately, I'm unable to come up with the money to cover these storages, **nor taking the containers back** after all these time. Please kindly advise, if any other way we can work this through."

(ECONO PFF App. 00234-00235).

122. At 1:22 PM, May 9, 2014, John Kamada forwarded Melissa Chen's email to Barbara Suarez, attempting to convince Maersk to reduce the charges. He prefaced Melissa Chen's email with "This loss will put my customer out of business. Here is her response..." (ECONO PFF App. 00237-00238).

123. At 6:59 AM, May 12, 2014, Barbara Suarez wrote to John Kamada. Her email reads:

"Abandonment letter does not release shipper of liability. **We requested the formal abandonment letter to see if we could put pressure on China Customs to order disposition.** This cargo was mis-declared as 'auto parts' when in fact it was 'used tires' which is a restricted commodity into China and one which is heavily fined. Maersk did not sit on this. We kept communication flow going asking Maersk China to intervene but it is not uncommon for China Customs to hold unto cargo, sometimes, over a year, to render a decision. At that time we made it known that best option was to find a new consignee or start re-export, which is what we're doing now..."

(ECONO PFF App. 00237).

124. At 7:35 PM, May 12, 2014, John Kamada wrote to Melissa Chen. His email reads:

"Please see below response from Maersk.

'Abandonment letter does not release shipper of liability. We requested the formal abandonment letter to see if we could put pressure on China Customs to order disposition. This cargo was mis-declared as 'auto parts' when in fact it was 'used tires' which is a restricted commodity into China and one which is heavily fined. Maersk did not sit on this. We kept communication flow going asking Maersk China to intervene but it is not uncommon for China Customs to hold unto cargo, sometimes, over a year, to render a decision. At that time we made it known that best option was to find a new consignee or start re-export, which is what we're doing now.

...'

Please let me know if you would like to proceed and pay the charges or if I should tell Maersk you cannot pay?..."

(ECONO PFF App. 00242-00243).

125. At 12:24 PM, May 13, 2014, Melissa Chen wrote back to John Kamada. Her email reads:

“... I don’t know how you have communicated with carrier. By my guess you talked to them about reducing costs and to talking the containers back?

I wouldn’t say you are not helping, however I am afraid we are in a very weak position if continuing the negotiation like the way is going. First of all, I want you to understand that, Amoy is victim in this case, and I have all the proof to show that we did follow the procedure by gathering cargo information prior to shipping and we did try finding the shipper to solving this problem soonest we found out the problem. We have already lost a lot on all transportation costs for these containers. Maersk is the world largest company, Econocaribe is also a large corporation, But Amoy is not. You can represent Econo to mitigate costs from \$171K + return to \$70K + return, it might seem good, but. This is actually a poor negotiation. And to be honest, a small forwarder like us cannot afford the loss and we just simply cannot pay.

I will not take the containers back. carriers have their solutions for this kind of situation and I suggest you not to agree again for taking them back.

...”

(ECONO PFF App. 00245-00246).

126. Melissa Chen’s email was sent forwarded by John Kamada to Barbara Suarez at 6:20 PM, May 13, 2014. (ECONO PFF App. 00248-00249).

127. Barbara Suarez responded to John Kamada at 7:59 AM, May 14, 2014. Her email reads:

“Maersk is not the bad guy here. In fact, your customer declared auto parts and shipped a restricted commodity to China. Of course, they choose to ignore that this is root cause of cargo sitting and facing re-export. Actually when this situation first arose, the options provided to Econocaribe were to find a new buyer or re-export but Econocaribe was not able to provide required commercial docs to initiate this process, prior to Customs seizure of the cargo.

As per North China local customs regulations, Customs retains the authority to order disposition of non-claimed cargo. Even when we have both consignee and shipper’s abandonment letter, the cargo remains under control of Customs. We were told and communicated that there is no clear timeline of how long Customs will take to render an approval for next move (disposal, return or auction)...”

(ECONO PFF App. 00248).

128. At 3:10 PM, May 13, 2014, John Kamada wrote to Melissa Chen. His email reads:

“...I tried as best I could to negotiate with Maersk on your behalf. If you feel that \$171k to \$67k (over a 60% reduction) is poor negotiating, I am sorry.

The bottom line here is that Amoy mis-declared cargo and shipped it under an Econocaribe and Maersk b/l. As the end shipper, Amoy is responsible regardless of any other internal issues you may have had. It makes no difference how big or small any of the parties involved are.

I will advise Maersk of your decision and this will then be out of my hands. I am sure you will be contacted for pending legal matters soon.”
(ECONO PFF App. 00245).

129. At 10:53 AM, June 9, 2014, Barbara Suarez wrote to Bob Goldenberg of Econocaribe.

Her email reads:

"...China Customs controls and decides when disposal can be arranged and for that reason, we don't have a final invoice from Customs. On that basis, Maersk China chose to petition Customs to allow re-export process to mitigate our exposure and costs, rather than let cargo continue to sit while Customs decides when to order disposition. If we let cargo continue to sit, until such a time that Customs actions, then 'yes', we'll be able to provide documentation, but we have no idea when that will be and cargo is on the clock for storage and Maersk D&D.

...

We have been at this for a while now and unless re-export charges are guaranteed, Maersk China will not initiate re-export of these containers. We were able to mitigate the D&D down significantly but afraid these costs will continue to rise while we wait for approval and guarantee to proceed."

(ECONO PFF App. 00253).

130. At 1:39 PM, June 9, 2014, John Kamada wrote to Melissa Chen, informing her that

Econocaribe was able to further reduce the total charges from \$171K + return to \$50K + return, with \$67,203 in total. (ECONO PFF App. 00255-00257).

131. At 10:43 AM, June 11, 2014, John Kamada wrote to Melissa Chen, asking if she would agree to pay Maersk the demurrage charges. (ECONO PFF App. 00255).

132. At 3:37 PM, June 11, 2014, Barbara Suarez wrote to Econocaribe. Her email reads:

"Maersk petitioned disposal from China Customs back in March, 2014, and so far no feedback. Containers remain at customs warehouse on terminal. Disposal is controlled by China Customs and not the carrier. Maersk China reports that Customs will not issue any type of invoice to the carrier, until they release a return order and decide to dispose or re-export. This is reason Maersk took the lead to arrange re-export and minimize customs fines and storage, which continues to accrue daily.

... "

(ECONO PFF App. 00259).

133. On July 24, 2014 Maersk made a demand for \$216,363.00 in settlement of all charges from Econocaribe. (ECONO PFF App. 00261).

134. On August 29, 2014 Econocaribe settled with Maersk for \$70,000. (ECONO PFF App. 00263, 00265-00266).

135. Cargo was released by China Customs some time before November 15, 2014. It was re-exported on Nov. 25, 2014. (ECONO PFF App. 00268).

136. Cargo arrived in Miami on or about January 12, 2015. (ECONO PFF App. 00271).

137. Destruction has not yet been authorized by U.S. Customs, but should occur during April, 2015 at a cost exceeding \$20,000. (ECONO PFF App. 00274).

138. Currently the cargo is stored in Customs General Order in Miami, Florida. A substantial storage fee has accrued. (ECONO PFF App. 00274).

CARGO WAS PROHIBITED IN CHINA

139. China bans the import of solid waste. Solid waste will be ordered by the Customs port authority to return to the original country within a prescribed period of time. Importer or carrier cannot abandon the solid waste (Article 29 of Import of Solid Waste Management Practices. (ECONO PFF App. 00280)).

140. Carrier can petition to China Customs for re-export if the consignee disclaims interest. (Article 29 of Import of Solid Waste Management Practices (ECONO PFF App. 00280)).

141. If the solid waste is not re-exported within three months from date of arrival, Customs will order re-export unless the solid waste cannot be returned or Customs determines that the solid waste does not need to be returned. In the later case, Customs will order auction or forfeit the cargo to other governmental agencies. (Article 31 of Import of Solid Waste Management Practices (ECONO PFF App. 00281)).

142. Used tires is considered prohibited goods from import by Chinese Government. (Catalogue of Goods Prohibited from Import (ECONO PFF App. 00294)).

143. The Chinese Regulations on Solid Waste became known to Econocaribe only after this litigation. (John Kamada Declaration (ECONO PFF App. 00440)).

AMOY'S TARIFF

144. 46 C.F.R. § 520.3(a) requires each non-vessel-operating common carrier (NVOCC) to publish its tariff showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.

145. 46 C.F.R. §520.4 requires that a Tariff must contain places between which cargo will be carried, classifications, sample copies of any bill of lading, commodity descriptions, etc.

146. The Commission will publish on its website, www.fmc.gov, a list of the locations of all carrier and conference tariffs. The Commission will update this list on a periodic basis. 46 C.F.R. §520.3(e).

147. Amoy is on FMC' OTI/NVOCC list. Amoy's Tariff is published and available from <http://rates.descartes.com>. (ECONO PFF App. 00302)).

148. Amoy's Tariff obtained from <http://rates.descartes.com> is attached as Econo PFF App. 00305 - 00369.

149. Amoy's Bill of Lading states that "the terms and conditions of the order bill of lading under which this shipment is accepted are printed on the back hereof." (Econo PFF App. 00063).

150. Amoy's terms and conditions is attached as Econo PFF App. 00371.

151. Amoy's Tariff contains sample bill of lading. (Econo PFF App. 00327-00339).

152. Paragraph 7(5) of Amoy's Tariff Bill of Lading makes merchants liable for "the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property ... caused by the Merchant or any person acting on his behalf or for which the Merchant is otherwise liable." (Econo PFF App. 00326).

ECONOCARIBE'S TARIFF

153. On May 20, 2013 Amoy contracted with Econocaribe for the shipment of 4 containers allegedly containing 100 packages of "Auto Parts (New)" from Oakland, CA to Xingang, China. (Econo PFF App. 00045-00046).

154. Econocaribe issued House Bill of Lading to Amoy. (Econo PFF App. 00061).

155. Econocaribe's Terms and Conditions were an integral part of the Bill of Lading. (Econo PFF App. 00373).

156. Econocaribe's Tariff was also incorporated into the Bill of Lading. The Bill of Lading states "transportation pursuant to this Bill of Lading is subject to conditions set forth in Econocaribe published tariff." (Econo PFF App. 00061).

157. Econocaribe's Tariff is filed with the Commission and available on Econocaribe's website. (Econo PFF App. 00303).

158. Econocaribe's Tariff's Rule 4 is identical or at least substantially similar to the entire Bill of Lading Terms and Conditions. (Econo PFF App. 00377-00388).

159. Econocaribe's Tariff Rule 2.4 states:

"Description of commodities shall be uniform on all copies of Bill of Lading. Trade Names are not acceptable commodity descriptions and Shippers are required to declare their commodity by its generally accepted generic or common name. Articles that are not provided for in this tariff will be freighted at the rates named in the commodity classification of 'Cargo, N.O.S'." (Econo PFF App. 00376).

160. Paragraph 15 of Econocaribe's Terms and Conditions of Service provides:

15.2 Merchant shall be liable for and shall indemnify the Carrier against all loss, damage, delay, fines, attorney fees and/or expenses arising from any breach of any of the warranties in clause 14.3 or from any other cause whatsoever in connection with the Goods for which the Carrier is not responsible.

15.3 The merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses including, without prejudice to the generality of the foregoing Freight for any additional Carriage undertaken, incurred or suffered by reason thereof, or by reason of any illegal, incorrect or insufficient declaration, or by reason of any illegal, incorrect or insufficient declaration, marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof. (Econo PFF App. 00373).

161. Paragraph 14 of Econocaribe's Bill of Lading and Conditions of Service provides:

14.3 The Shipper warrants to the Carrier that the particulars relating to the Goods as set out on the reverse hereof have been checked by the Shipper on receipt of this bill of lading and that such particulars, and any other particulars furnished by or on behalf of the Shipper, are adequate and correct. The Shipper also warrants that the Goods are lawful goods, and contain no contraband, drugs, other illegal substances or stowaways, and that the goods will not cause loss, damage or expense to the Carrier, or to any other cargo during the Carriage. (Econo PFF App. 00373).

AMOY'S KNOWLEDGE REGARDING THE CARGO

162. Krystal Lee, Amoy's employee, made the booking with Econocaribe and described the cargo as "auto parts (new)." (Econo PFF App. 00045-00046).

163. However, the cargo was baled used truck tires. (Econo PFF App. 00002, 00390-00391).

164. Econocaribe did not know that the cargo was baled used tires until the cargo arrived in China and was detained by Chinese Customs. (John Kamada Declaration (Econo PFF App. 00440)).

165. Krystal Lee knew that the cargo was in fact baled used truck tires when she booked cargo space with Econocaribe and made the misdeclaration. (John Kamada Affidavit (Econo PFF App. 00435)).

166. Melissa Chen now disputes that she had ever told John Kamada that Krystal Lee colluded with the shipper of this cargo. (Melissa Chen Declaration 1, Econo PFF App. 00027-00028). Nevertheless, she admitted in her email that Krystal made the “unauthorized booking.” (ECONO PFF App. 00188).

167. If Krystal Lee had been acting truthfully and diligently in ascertaining the nature of the cargo, as claimed by Amoy in its Opposition to Motion for Partial Summary Judgment, such booking would not be characterized as "unauthorized."

168. Melissa Chen found out that the cargo was “recycle items” at least as early as 11:53 AM, June 17, 2013. (ECONO PFF App. 00067).

169. Krystal Lee also misdeclared cargo in other shipments, causing lawsuits, penalties, etc. to accrue for Amoy's account. (ECONO PFF App. 00213, 00234-00235).

170. Besides Krystal Lee’s direct and actual knowledge of cargo, it is reasonable to assume Amoy knew that the cargo was used tires because Amoy’s business was related to used rubber and plastic industry, (ECONO PFF App. 00393-00397), and it specifically dealt in tire scrap. (ECONO PFF App. 00397).

171. Amoy advertised to sell four containers of used rubber in China. The fact that Amoy claimed that “Our business is related to Rubber & Plastics Industry and we specifically deal in tires scrap.” and "we have scrap rubber and used tires in bale available" shows that Amoy had title to the cargo. (ECONO PFF App. 00400).

172. Amoy now disputes that the Internet advertisement in fact reflects Amoy’s true business. (Melissa Chen Declaration 2 (ECONO PFF App. 00407-00408). Amoy states that it subscribed to those Internet websites in an attempt to sell the cargo in China. (ECONO PFF App. 00408).

173. This statement contradicts by Amoy's earlier response to Econocaribe's requests for production. Amoy stated then that it did not have any documentation showing Amoy's efforts at finding a buyer for the cargo in China. (ECONO PFF App. 00413).

174. Furthermore, Amoy on one hand admits that it had been a member of the Chinese merchandise advertising website Tradekey.com since 2013, and that it offered to sell four containers of tires scraps in China on Tradekey.com. (Melissa Chen Declaration 2 (ECONO PFF App. 00408)). At the same time, Amoy denies that it knows who posted the statements such as "Our business is related to Rubber & Plastics Industry and we specifically deal in tires scrap." (Melissa Chen Declaration 2 (ECONO PFF App. 00408)). All of these statements were posted under Amoy's Tradekey.com profile. Only persons having access to the Amoy's account can post under Amoy's account.

AMOY'S VIOLATIONS OF THE SHIPPING ACT

175. The cargo was declared by Amoy to Econocaribe as new auto parts. (ECONO PFF App. 00045-00046). The cargo was in fact baled used truck tires. (ECONO PFF App. 00002, 00390-00391). Therefore, cargo was misdeclared.

176. Krystal Lee knew that the cargo was used tires prior to booking. (John Kamada Affidavit (ECONO PFF App. 00435)). She knowingly and willfully misdeclared the cargo.

177. Amoy claims that its business is in the used rubber and used tires industry. (Econo PFF App. 00393-00397).

178. Amoy offered to sell four containers of used tires in China for \$100 - 300 per ton. (ECONO PFF App. 00403).

179. As a used rubber and used tire dealer, Amoy should have known the substantial likelihood that the cargo was used rubber and/or used tires.

180. Econocaribe would not ship used tires to China. (John Kamada Declaration (ECONO PFF App. 00440)).

181. Amoy is contractually liable for all demurrage and resulting costs from its breach of Econocaribe's terms and conditions. (Econocaribe Bill of Lading Terms and Conditions (Econo PFF App.00373)).

182. Amoy has steadfastly refused to provide payment for any resulting costs or mitigation. (John Kamada Declaration (Econo PFF App. 00441)).

AMOY'S FAMILIARITY WITH CHINA CUSTOMS REGULATION

183. Amoy holds a Chinese maritime license having China MOC License No. MOC-NVO03586. This shows up in every Amoy signature block. (for example, Econo PFF App. 00038).

184. Amoy is more familiar than Econocaribe with Chinese Customs. This is indicated by the facts that a) Amoy holds a Chinese maritime license, b) immediately after publicly admitting that the commodities were recycled items, Amoy pointed out that they were likely prohibited from entry into China, (Econo PFF App. 00067) and (c) in Amoy's internal communication, Melissa Chen stated that "Tianjin port is strictly not allowing any scrap materials to go in" (Econo PFF App. 00116).

185. Amoy claims to have branch offices in major cities all over China. (Employment Handbook (Econo PFF App. 00416)).

186. Amoy was ranked No. 85 on American Shipper's Top 100 Asia to U.S. Freight Forwarding Companies list for the year 2008-2009. (Employment Handbook (Econo PFF App. 00416)).

**AMOY'S FAMILIARITY WITH DEMURRAGE AND
KRYSTAL LEE'S PRIOR MISCONDUCT**

187. Amoy was sued by ZIM American Integrated Shipping Services Company, LLC ("ZIM") (Econo PFF 00418-00424).

188. According to ZIM's complaint, Amoy failed to make arrangements for the delivery of goods shipped to Europe in that case, and caused the accrual of charges for storage and demurrage in the amount of \$137,891.00. (Econo PFF App.422).

189. This large amount of demurrage suggested that Amoy had failed to rearrange delivery or re-export in a timely manner, similar to the case at bar. Melissa Chen alluded to a similar problem with MSC, Mediterranean Shipping Corp.

190. It also shows Amoy's knowledge of its liability for costs arising from freight shipped by it when not collected at destination, as in the case at bar. Melissa Chen alluded to a similar problem with MSC, Mediterranean Shipping Corp.

191. Melissa Chen admitted that the cargo in the Zim transaction shipment was misdeclared by Krystal Lee as wood pulp when in fact it was paper products. (Melissa Chen Declaration, (ECONO PFF App. 00028). Melissa Chen alluded to a similar problem with MSC, Mediterranean Shipping Corp. (Econo PFF App. 00234).

192. Although now disputed by Amoy, John Kamada swears to a conversation between him and Melissa Chen taking place on May 18, 2013 in which Melissa Chen stated that Krystal Lee

had previously colluded with another shipper and misdeclared cargo. (John Kamada Affidavit (Econo PFF App. 00435)).

193. Amoy's familiarity with demurrage can also be shown by her email to Daniel Akhromtsev on August 15, 2013. At that time the detention had taken place for only two months, yet Melissa Chen pointed out the losses was over \$100,000. (ECONO PFF App. 00161-00162).

194. During the same conversation, Melissa Chen also told John Kamada that Krystal Lee's misconduct caused lawsuits against Amoy by other carriers. (John Kamada Affidavit (Econo PFF App. 00435)).

195. Amoy fully understood the usual processes relating to "abandoned" cargo. (ECONO PFF App. 00067).

ECONOCARIBE DID NOT RECOMMEND THE ABANDONMENT OF CARGO

196. Amoy claims that it wanted to return the cargo but Econocaribe recommended that Amoy issue a letter of abandonment. Amoy further claims that this resulted in the Chinese Customs seizing the cargo. (App. Respondent's Opposition to Motion for Partial Summary Judgment (ECONO PFF App. 00427)).

197. In fact, Amoy is the party who initiated the idea of abandonment, as early as June 17, 2013, the same day cargo arrived in China. It asked Econocaribe to enquire Maersk about (1) extra time at port of destination, (2) abandonment, (3) return to US seller, and (4) resell to other parts in China. (ECONO PFF App. 00067).

198. Econocaribe turned around and Maersk for additional free time and return options. (ECONO PFF App. 00110).

199. Amoy proposed abandonment again on June 21, 2013 as a ploy to push Maersk for a faster response. (ECONO PFF App. 00119). Only with this understanding, did Econocaribe suggest Amoy to prepare a letter of abandonment. (ECONO PFF App. 00118).

200. Amoy proposed abandonment even though it knew that "Tianjin port is strictly not allowing any scrap materials to go in" and "these containers will have to be moved to other smaller countries in Asia." (ECONO PFF App. 00116).

201. Further, Amoy proposed abandonment immediately after, i.e. 2 minutes after, Econocaribe asked it to confirm if it wanted to return cargo back to US. (ECONO PFF App. 00092, 00119).

**AMOY'S CLAIMED RELIANCE ON ECONOCARIBE
IN ABANDONING CARGO IS UNREASONABLE**

202. Amoy states that it preferred the return of cargo and was misled into abandoning the cargo by Econocaribe. (App. Respondent's Opposition to Motion for Partial Summary Judgment (ECONO PFF App. 00427)).

203. Amoy's claimed preference of return over abandonment was obviously at odds with the fact that Amoy chose not to answer Econocaribe's email asking it to confirm whether it wanted to return the cargo to the U.S. but proposed to issue an abandonment letter. (ECONO PFF App. 00092, 00119).

204. Further, Amoy knew that used tires were absolutely prohibited by Tianjin port and cargo need to be re-exported somewhere else from the beginning. (ECONO PFF App. 00116). With such knowledge, it is unreasonable and illogical for Amoy to choose abandoning the cargo. Amoy was apparently betting on the odds that Chinese Customs would allow the cargo.

205. The record does not show Amoy's preference for return. It only shows that Amoy intended to solve the problem "soonest" and "cheapest" possible. (ECONO PFF App. 00131, 00132)

206. In fact, inquiry about return freight do not show Amoy's preference for return. Such inquiry only shows that Amoy was gathering information to make an economic decision. This is supported by the email in which Melissa Chen asked which was the "cheapest way," and that "even returning to the origin, we also can't find either of the seller or the middle man at moment." (ECONO PFF App. 00131).

207. Apparently, Amoy's decision was made based on cost calculation. It wanted to compare the cost between the return freight plus the uncertain cost associated with finding a buyer in the U.S. and the cost of abandonment.

208. On July 9, 2013, Melissa Chen instructed John Kamada "please proceed with abandonment" after he told her that return was "usually" a more expensive alternative. (ECONO PFF App. 00129).

209. Econocaribe did not mislead Amoy into abandoning the cargo. In fact, the idea of abandoning cargo was initiated by Amoy. (ECONO PFF App. 00067).

210. Econocaribe's suggestion that Amoy have an abandonment letter "ready to go" was a response to Amoy's own proposal that an abandonment letter would provide leverage for it against Maersk. (ECONO PFF App. 00118, 00119).

211. On July 9, 2013, when Ariel Martinez relayed Maersk's message to Melissa Chen, he correctly included all information from Maersk. (ECONO PFF App. 00133-00134, 00141-00144). Amoy was fully aware that Maersk needed Econocaribe to advise Maersk if Amoy had

found a new Chinese consignee, i.e. "to find new consignee to help return issue." (ECONO PFF App. 00133-00134).

212. When Melissa Chen asked for advice, John Kamada told her that because "no other consignee can be located" Amoy had the option of return the cargo back to the U.S. or have the cargo auctioned in China. (ECONO PFF App. 00132). This is a true statement with or without knowing that auction would not be permitted by China Customs regulation.

213. John Kamada did not suggest that Melissa Chen abandon the cargo. He simply presented the options and let her make her own decision. (ECONO PFF App. 00132).

214. Melissa Chen again asked for advice between return and abandonment. (ECONO PFF App. 00132).

215. In response, John Kamada still did not make any decision for Amoy. He simply insisted "I need you to tell me if it is to be auctioned or returned." (ECONO PFF App. 00131).

216. Then Melissa Chen expressed her concern about the costs involved and told John Kamada that even if she returned it to the U.S., Amoy could not find either the seller or middleman. She again asked what would be the cheapest way to solve this matter. (ECONO PFF App. 00131).

217. Knowing that Melissa Chen's concern was the costs associated with each option (return or abandonment), John Kamada asked if cargo was insured. (ECONO PFF App. 00130).

218. Only after determining that the cargo was not insured, he came to a general conclusion that return was "usually" more expensive than abandonment. (ECONO PFF App. 00129-00130).

219. This is a true statement without the benefit of hindsight that the cargo would be seized by China Customs for a long period of time. Further, John Kamada did not guarantee that for this

case, abandonment would be cheapest way to solve this matter. (ECONO PFF App. 00129-00130).

220. Melissa Chen then made up her mind to proceed with abandonment. (ECONO PFF App. 00129). This was a decision made of her own free will and with the knowledge that Chinese Customs would absolutely not allow scrap materials.

221. On July 17, 2013, when Ariel Martinez relayed Maersk's message to Melissa Chen, he correctly included all information from Maersk to Melissa Chen. (ECONO PFF App. 00152, 00127-00128). Amoy was on notice that it must “find a new buyer at destination or arrange re-export” or the cargo would be treated as abandoned after 90 days. (ECONO PFF App. 00127-00128).

222. Amoy was also on notice that if the cargo was treated as abandoned, China Customs would handle it in three different ways: “(1) Order return to origin (if cargo is found as prohibited or restricted to import to China); (2) Auction (if cargo is found allowed to import to China); (3) Destroy (if cargo is found not in good condition for return and auction).” (ECONO PFF App. 00127-00128).

223. Melissa Chen’s response that “It seems the shipment will need to be destroyed at port of destination” indicates that *she did not even consider the returning the cargo or finding a new buyer in destination*. She went directly to the abandonment route and concluded that the cargo would be destroyed in China (if the cargo were found not in good condition for return and auction which, as prohibited goods, she knew it could not be). (ECONO PFF App. 00127).

224. Ariel Martinez did not agree with Melissa Chen. He correctly told Melissa Chen that if the cargo was not discharged within 90 days, China Customs would determine how it would

proceed with either of the three options - return, auction or destroy. He never told Melissa Chen that abandonment would definitely rule out the possibility of return. (ECONO PFF App. 00126).

225. Melissa Chen's mindset was apparently stuck with abandonment. Although she was aware of the option of immediate return, she nevertheless thought she could abandon the cargo and wait for the 90 days period to expire. She anticipated that "sky high" costs would incur if she had to wait for the 90 days period to expire. (ECONO PFF App. 00126). However, she could have avoided the sky high costs had she immediately initiated the return procedure.

226. John Kamada's email to George Amador shows that his understanding of the Maersk message as being that if the cargo was found to be prohibited, it should be re-exported to the U.S.. (ECONO PFF App. 00151-00152). But John Kamada thought the cargo "should not be" prohibited, therefore, it could be abandoned, auctioned or destroyed. (ECONO PFF App. 00151-00152). (Unlike Amoy, John Kamada does not "specifically deal in tires scrap" so he did not have independent knowledge of that industry.) He further asked Maersk to confirm his reading of the Maersk message. (ECONO PFF App. 00151-00152).

227. Maersk's reply confirmed Kamada's understanding that if the cargo was not discharged within 90 days it would be considered abandoned, and it could then be returned or auctioned or destroyed with additional charges. (ECONO PFF App. 00151).

228. If Maersk had told Econocaribe that the cargo would never be auctioned or destroyed, Econocaribe would have told Amoy not to even consider abandonment. Econocaribe merely conveyed Maersk's information. (John Kamada Declaration (ECONO PFF App. 00440)).

229. In her Declaration, Melissa Chen states that had the September 6, 2013 Maersk message been relayed to her, she would have insisted on returning the cargo. (Melissa Chen Declaration 1 (ECONO PFF App. 00021-00022)).

230. Econocaribe had communicated verbally the substance of this email to Amoy. (John Kamada Declaration (ECONO PFF App. 00440)).

231. It is doubtful whether Amoy would insist the return of cargo with the knowledge that the best option would be re-export, because at that time, the accrued demurrage was far less than \$100,000, an amount of potential damages Amoy was well aware of when it undertook the risk of abandonment. (ECONO PFF App. 00161-00162).

232. Even if Amoy had insisted the re-export of cargo, cargo could not be re-exported because: first; commercial documents for re-export was not available at least before September 6, 2013 (ECONO PFF App. 00148); and second; Chinese Customs would have slowly processed any re-export request because Chinese Customs is very sensitive to seized, prohibited commodities (ECONO PFF App. 00193).

233. Commercial documents for re-export include commodity description, genuine commercial invoices of the cargo, packing slips, value of goods, etc. Amoy had to get these genuine documents from Global Waste Management for the "shipping company". (ECONO PFF App. 00193).

234. Because Amoy said that it had produced all communications with Daniel Akhromtsev and it said they were produced, (ECONO PFF App. 00429, 00431), Amoy did not have these commercial documents for re-export even if it wanted to re-export cargo in the period from September 6, 2013 to September 16, 2013, the purported day 90 days period ended.

ECONOCARIBE'S REASONABLENESS IN MITIGATION

235. At all relevant times, Econocaribe informed Amoy of all its possible options.

236. Econocaribe never assumed the duty to make any decisions for Amoy. It consistently told Amoy that the final decision was Amoy's (ECONO PFF App. 00129-00130); that it was liable for the accruing charges (ECONO PFF App. 00132), and that it needed Amoy to make a decision (ECONO PFF App. 00131).

237. Econocaribe did inquire of Maersk as to the cost of return, from the beginning of detention (ECONO PFF App. 00110), to even after Amoy had instructed Econocaribe to proceed immediately with abandonment (ECONO PFF App. 00107).

238. John Kamada told Melissa Chen that return was usually more expensive. (ECONO PFF App. 00129-00130). The statement is just a general conclusion. John Kamada never told Melissa Chen that in this case, abandonment would be more expensive. (ECONO PFF App. 00129-00130).

239. After being threatened with suit, Econocaribe settled with Maersk, so that Maersk could start the re-export process as soon as possible. (ECONO PFF App. 00227 ("just note that the charges need to be paid up front PRIOR to the cargo returning to Los Angeles" and John Kamada Declaration (ECONO PFF App. 00441)).

240. Econocaribe could have waited until it has been fully indemnified by Amoy. Econocaribe did not wait because it was mitigating demurrage costs.

241. The original storage, demurrage, seizure, per diem etc. charge in China was \$216,363.00. It was ultimately mitigated by Econocaribe to \$70,000 - an amount which has been paid in full by Econocaribe to Maersk. (ECONO PFF App. 00265-00266).

ECONOCARIBE'S DAMAGES

242. Econocaribe has mitigated and paid Maersk the demurrage charge of \$70,000 (ECONO PFF App. 00265-00266).
243. The return freight is \$17,300. (Arrival Notice (ECONO PFF App. 00271)).
244. Customs clearance, drayage, devanning and costs of destruction are estimated be \$20,000. (ECONO PFF App. 00274).
245. Legal fees and costs have approximated \$55,000.00 to date.
246. After the destruction of returned used tires, Econocaribe will provide an accurate accounting.

DATED: April 13, 2015

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT'S STATEMENT OF FACTS**

AND BRIEF was sent to the below-mentioned counsel via email on April 13, 2015.

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